UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,655	11/28/2006	Matthew J. Scanlan	L0461.70156US00	5836

23628 7590 05/28/2009

WOLF GREENFIELD & SACKS, P.C.
600 ATLANTIC AVENUE
BOSTON, MA 02210-2206

EXAMINER	
AEDER, SEAN E	

ART UNIT	PAPER NUMBER
1642	

MAIL DATE	DELIVERY MODE
05/28/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/529,655	**Applicant(s)** SCANLAN ET AL.	
	Examiner SEAN E. AEDER	**Art Unit** 1642	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): the Double Patenting rejection.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *180-200*.
   Claim(s) objected to: _____.
   Claim(s) rejected: *201-206*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Sean E Aeder/
Primary Examiner, Art Unit 1642

Continuation of 11. does NOT place the application in condition for allowance because: Claims 201-206 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Dumas et al (EP 1 033 401 A2; 9/6/00) in view of Altman et al (Science, 10/4/96, 274:94-96) for the reasons stated in the Office Action of 2/17/09 and for the reasons set-forth below.

Claim 201 is drawn to a composition comprising an isolated polypeptide with a sequence as set forth as SEQ ID NO:55 or a fragment thereof that is at least 8 amino acids in length, a MHC molecule, and a pharmaceutically acceptable carrier, wherein the isolated polypeptide is complexed to the MHC molecule. Claim 202 is drawn to the isolated composition of claim 201, wherein the fragment is at least 9-100 amino acids in length. Claim 203 is drawn to a composition of claim 201 or 202 wherein the MHC molecule is a HLA class I molecule. Claim 204 is drawn to a composition of claim 201 or 202 wherein the MHC molecule is a HLA class I molecule. Claim 205 is drawn to a composition comprising (a) an isolated polypeptide with a sequence as set forth as SEQ ID NO:55 or a fragment thereof that is at least 8 amino acids in length, (b) an adjuvant, cytokine, or a costimulatory molecule, and (c) a pharmaceutically acceptable carrier. Dumas et al teaches an isolated polypeptide, SEQ ID NO:4557, comprising a sequence set forth as a fragment of instant SEQ ID NO:55, wherein the fragment is at least 9 amino acids in length. Dumas et al further teaches said polypeptide is to be evaluated for its effect on cytotoxic lymphocytes (paragraphs 296 and 300, in particular).

Dumas et al does not specifically teach a composition comprising said polypeptide complexed to a class I MHC costimulatory molecule and a pharmaceutical carrier. However, these deficiencies are made up in the teachings of Altman et al.
Altman et al teaches a method of evaluating effects of polypeptides on cytotoxic lymphocytes comprising exposing said lymphocytes to compositions comprising said polypeptides conjugated to MHC HLA class I costimulatory molecules and a pharmaceutical carrier (Figure 1, in particular).

One of ordinary skill in the art at the time the invention was made would have been motivated to produce compositions comprising the polypeptide of Dumas et al conjugated to a MHC HLA class I costimulatory molecule and a pharmaceutical carrier in order to use said composition in the method of Altman et al to evaluate the effect of the polypeptide on cytotoxic lymphocytes because Dumas et al teaches said polypeptide is to be evaluated for its effect on cytotoxic lymphocytes (paragraphs 296 and 300, in particular). One of ordinary skill in the art at the time the invention was made would have had a reasonable expectation of success for producing compositions comprising the polypeptide of Dumas et al conjugated to a MHC HLA class I costimulatory molecule and a pharmaceutical carrier because Dumas et al teaches said polypeptide and Altman et al teaches a method comprising producing compositions comprising polypeptides conjugated to MHC HLA class I costimulatory molecules and a pharmaceutical carrier (page 94, in particular).. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, absent unexpected results.

In the Reply of 5/18/09, Applicant argues the claimed invention is not obvious in view of the cited references because there is nothing in the prior art that would have led the skilled artisan to have selected the polypeptide of SEQ ID NO:4557 from others disclosed in Dumas et al.

The arguments found in the Reply of 5/18/09 have been carefully considered, but are not deemed persuasive. In regards to the argument that the claimed invention is not obvious in view of the cited references because there is nothing in the prior art that would have led the skilled artisan to have selected the polypeptide of SEQ ID NO:4557 from others disclosed in Dumas et al, Dumas et al teaches all polypeptides taught by Dumas et al are to be evaluated for their effects on cytotoxic lymphocytes (see paragraphs 296 and 300, in particular). Dumas et al anticipates a method of evaluating the polypeptide of SEQ ID NO:4557 for effects on cytotoxic lymphocytes. Further, Dumas et al in view of Altman et al renders obvious a composition which would predictably function in methods of evaluating said effects.
.